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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 WILLIAM BROWN, on Behalf of
14 Himself and all Others Similarly Situated,
15 Plaintiff,
16 v.
17 BLACKBAUD, INC.,
18 Defendant.

Case No. 2:18-cv-3549-AB-KS

STIPULATED PROTECTIVE
ORDER¹

19 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based
20 on the parties' Stipulation for Protective Order ("Stipulation") filed on May 22,
21 2018, the terms of the protective order to which the parties have agreed are
22 adopted as a protective order of this Court (which generally shall govern the
23 pretrial phase of this action) except to the extent, as set forth below, that those
24 terms have been modified by the Court's amendment of paragraph 6.2 and
Attachment/Exhibit A to the Stipulation.

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27
28 ¹ This Stipulated Protective Order is based substantially on the model protective order
provided under Magistrate Judge Alexander F. MacKinnon's Procedures.

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve Plaintiff William Brown's ("Plaintiff") private
13 and confidential information, and Defendant Blackbaud, Inc.'s ("Defendant"), as well
14 as its client schools' ("Schools"), trade secrets, customer and pricing lists and other
15 valuable research, development, commercial, financial, technical and/or proprietary
16 information for which special protection from public disclosure and from use for any
17 purpose other than prosecution of this action is warranted. Such confidential and
18 proprietary materials and information consist of, among other things, Plaintiff's
19 address, children's names, and credit card information, and Defendant's and the
20 Schools' confidential business or financial information (e.g., tuition amounts, fees,
21 and related information), information regarding confidential business practices, or
22 other confidential research, development, or commercial information (including
23 information implicating privacy rights of third parties), information otherwise
24 generally unavailable to the public, or which may be privileged or otherwise protected
25 from disclosure under state or federal statutes, court rules, case decisions, or common
26 law. Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately
28 protect information the parties are entitled to keep confidential, to ensure that the

1 parties are permitted reasonable necessary uses of such material in preparation for and
2 in the conduct of trial, to address their handling at the end of the litigation, and serve
3 the ends of justice, a protective order for such information is justified in this matter. It
4 is the intent of the parties that information will not be designated as confidential for
5 tactical reasons and that nothing be so designated without a good faith belief that it
6 has been maintained in a confidential, non-public manner, and there is good cause
7 why it should not be part of the public record of this case.

8
9 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
10 SEAL

11 The parties further acknowledge, as set forth in Section 12.3, below, that this
12 Stipulated Protective Order does not entitle them to file confidential information under
13 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to file
15 material under seal.

16 There is a strong presumption that the public has a right of access to judicial
17 proceedings and records in civil cases. In connection with non-dispositive motions,
18 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
19 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
20 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
21 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
22 cause showing), and a specific showing of good cause or compelling reasons with
23 proper evidentiary support and legal justification, must be made with respect to
24 Protected Material that a party seeks to file under seal. The parties' mere designation
25 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
26 submission of competent evidence by declaration, establishing that the material sought
27 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
28 constitute good cause.

1 Further, if a party requests sealing related to a dispositive motion or trial, then
2 compelling reasons, not only good cause, for the sealing must be shown, and the relief
3 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
4 *Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
5 item or type of information, document, or thing sought to be filed or introduced under
6 seal in connection with a dispositive motion or trial, the party seeking protection must
7 articulate compelling reasons, supported by specific facts and legal justification, for
8 the //
9 requested sealing order. Again, competent evidence supporting the application to file
10 documents under seal must be provided by declaration.

11 Any document that is not confidential, privileged, or otherwise protectable in its
12 entirety will not be filed under seal if the confidential portions can be redacted. If
13 documents can be redacted, then a redacted version for public viewing, omitting only
14 the confidential, privileged, or otherwise protectable portions of the document, shall
15 be filed. Any application that seeks to file documents under seal in their entirety
16 should include an explanation of why redaction is not feasible.

17 18 2. DEFINITIONS

19 2.1. Action: this pending federal lawsuit titled Brown v. Blackbaud, Inc.,
20 Case No. 2:18-CV-3549.

21 2.2. Challenging Party: a Party or Non-Party that challenges the designation
22 of information or items under this Order.

23 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for protection
25 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
26 Cause Statement.

27 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
28 support staff).

1 2.5. Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6. Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

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9 2.7. Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
11 expert witness or as a consultant in this Action.

12 2.8. House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.9. Non-Party: any natural person, partnership, corporation, association or
16 other legal entity not named as a Party to this action.

17 2.10. Outside Counsel of Record: attorneys who are not employees of a party
18 to this Action but are retained to represent or advise a party to this Action and have
19 appeared in this Action on behalf of that party or are affiliated with a law firm that has
20 appeared on behalf of that party, and includes support staff.

21 2.11. Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13. Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or medium)

1 and their employees and subcontractors.

2 2.14. Protected Material: any Disclosure or Discovery Material that is
3 designated as “CONFIDENTIAL.”

4 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6
7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or extracted
10 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
11 Protected Material; and (3) any testimony, conversations, or presentations by Parties
12 or their Counsel that might reveal Protected Material.

13 Any use of Protected Material at trial shall be governed by the orders of the trial
14 judge. This Order does not govern the use of Protected Material at trial.

15
16 4. DURATION

17 Once a case proceeds to trial, information that was designated as
18 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
19 as an exhibit at trial becomes public and will be presumptively available to all
20 members of the public, including the press, unless compelling reasons supported by
21 specific factual findings to proceed otherwise are made to the trial judge in advance of
22 the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing
23 for sealing documents produced in discovery from “compelling reasons” standard
24 when merits-related documents are part of court record). Accordingly, the terms of
25 this protective order do not extend beyond the commencement of the trial.

26
27 5. DESIGNATING PROTECTED MATERIAL

28 5.1. Exercise of Restraint and Care in Designating Material for Protection.

1 Each Party or Non-Party that designates information or items for protection under this
2 Order must take care to limit any such designation to specific material that qualifies
3 under the appropriate standards. The Designating Party must designate for protection
4 only those parts of material, documents, items or oral or written communications that
5 qualify so that other portions of the material, documents, items or communications for
6 which protection is not warranted are not swept unjustifiably within the ambit of this
7 Order.

8 Mass, indiscriminate or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber the case development process or to impose
11 unnecessary expenses and burdens on other parties) may expose the Designating Party
12 to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
14 designated for protection do not qualify for protection, that Designating Party must
15 promptly notify all other Parties that it is withdrawing the inapplicable designation.

16 5.2. Manner and Timing of Designations. Except as otherwise provided in
17 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
18 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
19 under this Order must be clearly so designated before the material is disclosed or
20 produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the legend
25 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
26 contains protected material. If only a portion of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the protected portion(s)
28 (e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and
4 before the designation, all of the material made available for inspection shall be
5 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
6 it wants copied and produced, the Producing Party must determine which documents,
7 or portions thereof, qualify for protection under this Order. Then, before producing
8 the specified documents, the Producing Party must affix the “CONFIDENTIAL
9 legend” to each page that contains Protected Material. If only a portion of the material
10 on a page qualifies for protection, the Producing Party also must clearly identify the
11 protected portion(s) (e.g., by making appropriate markings in the margins).

12 (b) for testimony given in depositions that the Designating Party
13 identifies the Disclosure or Discovery Material on the record, before the close of the
14 deposition all protected testimony.

15 (c) for information produced in some form other than documentary
16 and for any other tangible items, that the Producing Party affix in a prominent place
17 on the exterior of the container or containers in which the information is stored the
18 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
19 protection, the Producing Party, to the extent practicable, shall identify the protected
20 portion(s).

21 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
22 failure to designate qualified information or items does not, standing alone, waive the
23 Designating Party’s right to secure protection under this Order for such material.
24 Upon timely correction of a designation, the Receiving Party must make reasonable
25 efforts to assure that the material is treated in accordance with the provisions of this
26 Order.

27 //

28 //

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq. **and consistent with the Court's**
7 **pre-motion discovery procedures.**

8 6.3. Joint Stipulation. Any challenge submitted to the Court shall be via a
9 joint stipulation pursuant to Local Rule 37-2.

10 6.4. The burden of persuasion in any such challenge proceeding shall be on
11 the Designating Party. Frivolous challenges, and those made for an improper purpose
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
13 expose the Challenging Party to sanctions. Unless the Designating Party has waived
14 or withdrawn the confidentiality designation, all parties shall continue to afford the
15 material in question the level of protection to which it is entitled under the Producing
16 Party's designation until the Court rules on the challenge.

17
18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1. Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under the
23 conditions described in this Order. When the Action has been terminated, a Receiving
24 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.

28 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
2 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
3 only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
5 well as employees of said Outside Counsel of Record to whom it is reasonably
6 necessary to disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel)
8 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional
15 Vendors to whom disclosure is reasonably necessary for this Action and who have
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or
18 a custodian or other person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses, and attorneys for witnesses, in
20 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
21 party requests that the witness sign the “Acknowledgment and Agreement to Be
22 Bound” attached as Exhibit A hereto (“Exhibit A”); and (2) they will not be permitted
23 to keep any confidential information unless they sign Exhibit A, unless otherwise
24 agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may be
26 separately bound by the court reporter and may not be disclosed to anyone except as
27 permitted under this Stipulated Protective Order; and

28 (i) any mediator or settlement officer, and their supporting personnel,

1 mutually agreed upon by any of the parties engaged in settlement discussions.

2
3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL,” that Party must:

8 //

9 (a) promptly notify in writing the Designating Party. Such notification
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Protective Order. Such notification shall include a
14 copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” before a determination by the court from which the
20 subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material and nothing in these provisions
23 should be construed as authorizing or encouraging a Receiving Party in this Action to
24 disobey a lawful directive from another court.

25
26 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
27 IN THIS LITIGATION

28 (a) The terms of this Order are applicable to information produced by

1 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
2 produced by Non-Parties in connection with this litigation is protected by the
3 remedies and relief provided by this Order. Nothing in these provisions should be
4 construed as prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request,
6 to produce a Non-Party’s confidential information in its possession, and the Party is
7 subject to an agreement with the Non-Party not to produce the Non-Party’s
8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the
10 Non-Party that some or all of the information requested is subject to a confidentiality
11 agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

15 (3) make the information requested available for inspection by
16 the Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court
18 within 14 days of receiving the notice and accompanying information, the Receiving
19 Party may produce the Non-Party’s confidential information responsive to the
20 discovery request. If the Non-Party timely seeks a protective order, the Receiving
21 Party shall not produce any information in its possession or control that is subject to
22 the confidentiality agreement with the Non-Party before a determination by the court.
23 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
24 of seeking protection in this court of its Protected Material.

25
26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7
8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection,
12 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
13 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
14 may be established in an e-discovery order that provides for production without prior
15 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
16 parties reach an agreement on the effect of disclosure of a communication or
17 information covered by the attorney-client privilege or work product protection, the
18 parties may incorporate their agreement in the stipulated protective order submitted to
19 the court.

20
21 12. MISCELLANEOUS

22 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2. Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order, no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3. Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
3 only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information in
6 the public record unless otherwise instructed by the court.

7 //

8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in paragraph 4, within 60
10 days of a written request by the Designating Party, each Receiving Party must return
11 all Protected Material to the Producing Party or destroy such material. As used in this
12 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
13 summaries, and any other format reproducing or capturing any of the Protected
14 Material. Whether the Protected Material is returned or destroyed, the Receiving
15 Party must submit a written certification to the Producing Party (and, if not the same
16 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
17 (by category, where appropriate) all the Protected Material that was returned or
18 destroyed and (2) affirms that the Receiving Party has not retained any copies,
19 abstracts, compilations, summaries or any other format reproducing or capturing any
20 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
23 reports, attorney work product, and consultant and expert work product, even if such
24 materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 4 (DURATION).

27 //

1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: May 22, 2018

7 /s/ Yeremey Krivoshey, Esq.

8 Attorneys for Plaintiff William Brown

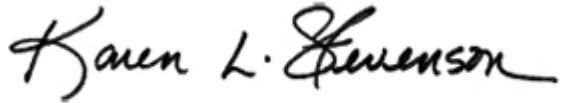
9 DATED: May 22, 2018

10 /s/ Barbara L. Croutch, Esq.

11 Attorneys for Defendant Blackbaud, Inc.
12
13

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15
16 DATED: May 23, 2018



17 HON. KAREN L. STEVENSON
18 United States Magistrate Judge
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28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued
7 by the United States District Court for the Central District of California on [date] in
8 the case of Brown v. Blackbaud, Inc., Case No: 2:18-CV-3549-AB-KS. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not disclose
12 in any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order.

15
16 I further agree to submit to the jurisdiction of the United States District Court for the
17 Central District of California for enforcing the terms of this Stipulated Protective
18 Order, even if such enforcement proceedings occur after termination of this action.
19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and telephone
21 number] as my California agent for service of process in connection with this action or
22 any proceedings related to enforcement of this Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____